

IC 6-3.1-26

Chapter 26. Hoosier Business Investment Tax Credit

IC 6-3.1-26-1**"Base state tax liability"**

Sec. 1. As used in this chapter, "base state tax liability" means a taxpayer's state tax liability in the taxable year immediately preceding the taxable year in which a taxpayer makes a qualified investment.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-2**"Board"**

Sec. 2. As used in this chapter, "board" has the meaning set forth in IC 6-3.1-13-1.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-3**"Director"**

Sec. 3. As used in this chapter, "director" has the meaning set forth in IC 6-3.1-13-3.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-4**"Full-time employee"**

Sec. 4. As used in this chapter, "full-time employee" has the meaning set forth in IC 6-3.1-13-4.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-5**"Highly compensated employee"**

Sec. 5. As used in this chapter, "highly compensated employee" has the meaning set forth in Section 414(q) of the Internal Revenue Code.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-6**"New employee"**

Sec. 6. As used in this chapter, "new employee" has the meaning set forth in IC 6-3.1-13-6.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-7**"Pass through entity"**

Sec. 7. As used in this chapter, "pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or

(5) limited liability partnership.
As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-8

"Qualified investment"

Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for:

- (1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment;
- (2) the purchase of new computers and related equipment;
- (3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry;

that are certified by the board under this chapter as being eligible for the credit under this chapter.

(b) The term does not include property that can be readily moved outside Indiana.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-9

"State tax liability"

Sec. 9. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-10

"State tax liability growth"

Sec. 10. As used in this chapter, "state tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus the greater of:

- (1) the taxpayer's state tax liability in the most recent prior taxable year in which the taxpayer claimed part of a credit under this chapter; or

(2) the taxpayer's base state tax liability;
before the application of a credit under this chapter.
As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-11

"Taxpayer"

Sec. 11. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or other entity that has state tax liability.
As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-12

Purpose of credit

Sec. 12. The board may make credit awards under this chapter to foster job creation and higher wages in Indiana.
As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-13

Entitlement to credit

Sec. 13. A taxpayer that:
 (1) is awarded a tax credit under this chapter by the board; and
 (2) complies with the conditions set forth in this chapter and the agreement entered into by the board and the taxpayer under this chapter;
is entitled to a credit against the taxpayer's state tax liability in a taxable year.
As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-14

Amount of credit

Sec. 14. (a) The total amount of a tax credit claimed under this chapter equals thirty percent (30%) of the amount of a qualified investment made by the taxpayer in Indiana.
 (b) In the taxable year in which a taxpayer makes a qualified investment, the taxpayer may claim a credit under this chapter in an amount equal to the lesser of:
 (1) thirty percent (30%) of the amount of the qualified investment; or
 (2) the taxpayer's state tax liability growth.
The taxpayer may carry forward any unused credit.
As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-15

Carry forward of credit

Sec. 15. (a) A taxpayer may carry forward an unused credit for not more than nine (9) consecutive taxable years beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment.
 (b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the lesser of the following:
 (1) The taxpayer's state tax liability growth.

- (2) The unused part of a credit allowed under this chapter.
 - (c) A taxpayer may:
 - (1) claim a tax credit under this chapter for a qualified investment; and
 - (2) carry forward a remainder for one (1) or more different qualified investments;in the same taxable year.
 - (d) The total amount of each tax credit claimed under this chapter may not exceed thirty percent (30%) of the qualified investment for which the tax credit is claimed.
- As added by P.L.224-2003, SEC.197.*

IC 6-3.1-26-16

Shareholder or partner entitled to credit

- Sec. 16. If a pass through entity does not have state tax liability growth against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:
- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
 - (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-17

Application

- Sec. 17. A person that proposes a project to create new jobs or increase wage levels in Indiana may apply to the board before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The director shall prescribe the form of the application.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-18

Agreement for credit; conditions

- Sec. 18. After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board determines that all the following conditions exist:

- (1) The applicant has conducted business in Indiana for at least one (1) year immediately preceding the date the application is received.
- (2) The applicant's project will raise the total earnings of employees of the applicant in Indiana.
- (3) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana.
- (4) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not raising the total earnings of employees in Indiana.
- (5) Awarding the tax credit will result in an overall positive

fiscal impact to the state, as certified by the budget agency using the best available data.

(6) The credit is not prohibited by section 19 of this chapter.

(7) The average wage that will be paid by the taxpayer to its employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-19

Credit disallowed for relocated jobs

Sec. 19. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. Determinations under this section shall be made by the board.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-20

Amount

Sec. 20. The board shall certify the amount of the qualified investment that is eligible for a credit under this chapter. In determining the credit amount that should be awarded, the board shall grant a credit only for the amount of the qualified investment that is directly related to expanding the workforce in Indiana.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-21

Agreement for credit; contents

Sec. 21. The board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.

(4) The maximum tax credit amount that will be allowed for each taxable year.

(5) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(6) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(7) A requirement that the taxpayer shall annually report to the board the number of new employees who are performing jobs not previously performed by an employee, the average wage of the new employees, the average wage of all employees at the

location where the qualified investment is made, and any other information the director needs to perform the director's duties under this chapter.

(8) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (7), and that after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(9) A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated employees in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of its useful life for federal income tax purposes or ten (10) years.

(11) A requirement that the taxpayer will maintain at the location where the qualified investment is made during the term of the tax credit a total payroll that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to the director and the board not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the board determines are appropriate.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-22

Certificate of verification

Sec. 22. A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the director's certificate of verification under this chapter for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-23

Noncompliance; assessment

Sec. 23. If the director determines that a taxpayer who has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the department of commerce and the department of state revenue of the noncompliance and request an assessment. The department of state revenue, with the assistance of the director, shall state the amount of the assessment, which may not exceed the sum of any previously allowed credits

under this chapter. After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-24

Report; contents

Sec. 24. On or before March 31 each year, the director shall submit a report to the board on the tax credit program under this chapter. The report must include information on the number of agreements that were entered into under this chapter during the preceding calendar year, a description of the project that is the subject of each agreement, an update on the status of projects under agreements entered into before the preceding calendar year, and the sum of the credits awarded under this chapter. A copy of the report shall be transmitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

As added by P.L.224-2003, SEC.197. Amended by P.L.28-2004, SEC.66.

IC 6-3.1-26-25

Biennial evaluation; report

Sec. 25. On a biennial basis, the board shall provide for an evaluation of the tax credit program, giving first priority to using the Indiana economic development council established under IC 4-3-14. The evaluation must include an assessment of the effectiveness of the program in creating new jobs and increasing wages in Indiana and of the revenue impact of the program and may include a review of the practices and experiences of other states with similar programs. The director shall submit a report on the evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives after June 30 and before November 1 in each odd-numbered year.

As added by P.L.224-2003, SEC.197.

IC 6-3.1-26-26

Expiration

Sec. 26. (a) This chapter applies to taxable years beginning after December 31, 2003.

(b) Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for a qualified investment made after December 31, 2007. However, this section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a qualified investment made before January 1, 2008, forward to a taxable year beginning after December 31, 2007, in the manner provided by section 15 of this chapter.

As added by P.L.224-2003, SEC.197. Amended by P.L.81-2004, SEC.16.